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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 300.

CHRISTIAN F. LIEBKE AND CHARLES H. SCHRAGE, PLAINTIFFS IN ERROR,

vs.

WILLIAM THOMAS.

IN ERROR TO THE ST. LOUIS COURT OF APPEALS IN THE STATE OF MISSOURI.

FILED SEPTEMBER 25, 1883.

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INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's return and certificate	2	2
Caption	3	2
Transcript from circuit court of St. Louis	3	2
Caption	3	2
Petition	3	2
Amended answer	5	3
Reply	8	5
Submission	8	5
Judgment	9	6
Order denying new trial	9	6
allowing bill of exceptions	9	6
appeal	10	6
Bill of exceptions	10	7
Testimony of William Thomas	10	7
William Morgan	16	11
C. F. Liebke	22	16
Plaintiffs' instructions (given)	23	17
Defendant's instructions (refused)	24	17
Motion for new trial	27	19
Affidavit for appeal	28	20
Bond	29	20
Clerk's certificate	30	21

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	Original.	Print.
Assignment of errors	31	21
Judgment	32	22
Opinion	32	22
Motion for rehearing	34	23
Order overruling motion for rehearing	35	24
Order as to writ of error, &c.	35	24
Citation	36	24
Service of citation	37	24
Bond	38	25
Stipulation to use this record in No. 635 of O. T., 1885	40	25

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the St. Louis court of appeals, State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said St. Louis court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William Thomas, as plaintiff, and Christian F. Liebke and Charles H. Schrage, as defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Christian F. Liebke and Charles H. Schrage, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this thirteenth day of February, in the year of our Lord one thousand eight hundred and eighty-three.

Issued at office, in the city of [St.] Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[Seal of the United States Circuit Court, Eastern District of Missouri.)

M. M. PRICE,
Clerk of said Circuit Court,
By A. P. SELBY, *Deputy.*

Allowed by—

EDW'D A. LEWIS,
Pres. Judge.

2 STATE OF MISSOURI, *ss:*

I, Joseph F. Baier, clerk of the Saint Louis court of appeals, in obedience to the mandate of the within writ, [transmit] herewith to the honorable Supreme Court of the United States of America a full and complete transcript of the record and proceedings in the within-entitled cause as fully as the same remain of record in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 11th day of April, A. D. 1883.

[Seal of St. Louis Court of Appeals, Mo.]

JOS. F. BAIER, *Clerk.*

[Endorsed:] 2495. C. F. Liebke *et al.*, P. E., *vs.* Wm. Thomas, D. E. Writ of error.

3 STATE OF MISSOURI, *ss:*

Be it remembered that heretofore, to wit, on the 23d day of June, A. D. 1882 there was filed in the office of the clerk of the Saint Louis court of appeals a transcript of the record and proceedings in a certain cause lately pending in the circuit court, city of Saint Louis, which is in the words and figures following, to wit:

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Be it remembered that heretofore, to wit, on the 22nd day of October, A. D. 1881, there was filed in the office of the clerk of the circuit court within and for the city of St. Louis, State of Missouri, a petition wherein William Thomas is plaintiff and Christian F. Liebke and Charles H. Schrage are defendants, which petition is in the words and figures following, to wit:

Petition.

In the Circuit Court in and for the City of Saint Louis. December Term, 1881.

WILLIAM THOMAS, Pl'ff,
vs.
CHRISTIAN F. LIEBKE and CHARLES H. SCHRAGE, Def'ts.

Plaintiff says that the defendants, on and before the eighth day of August, 1877, were copartners in business in the city of Saint Louis, Mo., under the name and style of Liebke and Schrage, and that on said eight- day of August, 1877, this pl'ff, at the instance and request of said defendants, and for their use and benefit and accommodation, and without any consideration paid by them to him or due from him, did, at St. Louis, Missouri, on the eight- day
4 of August, 1877, make and execute his negotiable promissory note of that date, wherein and whereby he promised to pay to the order of the said Liebke and Schrage the sum of five hundred dollars, at the North Western Savings Bank, in three months after said date of said note, with interest at ten per cent. per annum

after maturity, and that he then and there delivered said note to the defendants to be sold or used by them for their own use and benefit; and at the time of said delivery the said defendants then and there admitted and acknowledged that said note was made for their use and accommodation, and agreed that they would take care of and pay the same when it became due, and would hold the plaintiff harmless from said note.

And plaintiff says that said Liebke and Schrage took said note and sold the same for their own use and benefit, and used the proceeds of the same, but plaintiff says that said Liebke and Schrage wholly neglected and refused to pay the same when it became due, or at any other time as they had agreed to do, except a small sum which was endorsed on said note, and that this pl'ff was compelled to pay, and did pay, the same to the Mullanphy Bank, which was the then owner and holder of said note in St. Louis, on the fourteenth day of November, A. D. 1879, at which time the balance due on said note was the sum of four hundred and thirty-five dollars, which sum this plaintiff then and there paid to said bank on the day last aforesaid named, and then paid and took up said note. And plaintiff says that said defendant-, or either of them, has never paid to him, or any one for him, in any way, any part or portion of the said sum of four hundred and thirty-five dollars so paid by him as aforesaid, though often requested to do so by this pl'ff, but said defendants have wholly refused and neglected so to do, to the great damage of the plaintiff. Wherefore pl'ff asks judgment against said defendants for the said sum of four hundred and thirty-five dollars, with interest on the same at the *note* of six per cent. per annum from said 14th of November, 1879, to date of judgment, and for his costs.

By D. T. JEWETT,
His Att'y.

Whereupon summons issued — directed to the sheriff, of the city of St. Louis and by him returned duly executed.

And afterwards, to wit, on the 9th day of January, A. D. 1882, the defendants filed their answer, which is in the words and figures following, to wit:

Amended Answer.

In the Circuit Court, City of St. Louis, State of Missouri.

WILLIAM THOMAS, Plaintiff,
vs.
CHRISTIAN F. LIEBKE and CHARLES H. SCHRAGE, Defendants. } 57325.

And now comes the defendants by leave of court and file this their amended answer to plaintiff's petition, and for answer state:

That they deny each and every allegation of each of the several counts contained in said petition; and, further answering, defendants say, that on the third day of October, 1877, they filed their petition in the district court of the United States for the eastern dis-

trict of Missouri, in bankruptcy, asking to be adjudged bankrupts; and thereupon such proceedings were had in said matter; that defendants were adjudicated bankrupts on the 13th day of October, 1877; that thereafter such proceedings were had in said mat-
6 ter, as that defendants made to their creditors a proposition for a composition of their indebtedness to them at a meeting called for that purpose, as provided by the laws of the United States concerning bankruptcy then in force, and held on the 26th day of October, 1877, in said district, of which plaintiff was duly notified.

Defendants say that at such meeting they duly presented a schedule or statement showing their assets and the names of the persons to whom they were indebted, how and in what amount, and the addresses of their various creditors; and that all their creditors were duly notified of such meeting, including the persons who then held & were the owners of the notes and acceptances described by the plaintiff in his petition; and that thereupon a majority in number and three-fourths in value of their creditors passed a resolution at said meeting accepting the proposition made them by defendants, which resolution was subsequently confirmed by the signatures of these defendants and two-thirds in number and one-half in value of *of* all their creditors, including the persons who were then the owners and holders of the notes & acceptances described by plaintiff.

Defendants further say that by the terms of said composition and resolution they agreed to pay their creditors thirty per centum of their indebtedness to them in six equal instalments, payable, respectively, in three, six, nine, twelve, eighteen, and twenty-four months after date, said payments to be endorsed by the notes of these defendants and secured by a deed of trust upon the property in said proposition described; and that their said creditors agreed to and did accept the same and discharged the defendants from all
7 further liability on account of the indebtedness of these defendants to them, including that sued for in this case.

And, further, defendants say that subsequently such proceedings were had in said matter; that on the 8th day of November, 1877, these defendants presented the aforesaid resolutions with the aforesaid statement of their assets and liabilities or debts to the said court, and thereupon, after having given the notice required by law, the said court did, upon hearing, inquire whether such resolutions had been passed in the manner directed by law, and became satisfied that it had been so passed, and that it was for the best interest of all defendants' creditors and all those concerned that the same should be appproved, and thereupon on said last-named day said court did cause said resolution to be recorded in said court, & said statement of assets and debts to be filed therein, where they now are, & remain of record in said court.

Defendants further state that, in pursuance of said resolution and its acceptance by their creditors, and the approval and the recording of the same by said district court, they executed and delivered to all of their said creditors, including the holders & owners of the notes and acceptances described by plaintiff their notes as by said resolution and the orders of the said court respecting the same required, and also executed &

delivered to certain persons named therein as trustees their certain deed of trust of that date upon the property therein named to secure the same as in said resolution provided, and in all respects complied with the terms and conditions of said resolutions and the orders of the court made in pursuance thereof, and that they paid said composition notes as they matured, including those given for the indebtedness sued on this case, and that thereby and in virtue of
8 said composition and proceedings above described they became and now are discharged from all liability on account of the indebtedness or liability stated by the plaintiff in his petition.

Defendants, therefore, ask for judgment.

G. M. STEWART AND PAUL BAKEWELL,
Attorneys for Defendants.

And on the 10th day of January, A. D. 1882, the following replication to amended answer was filed, as follows:

Reply.

In the Circuit Court for the City of St. Louis, Missouri. December Term, 1881.

WILLIAM THOMAS, Pl'ff,
[*vs.*]
CHRISTIAN F. LIEBKE and CHARLES H. SCHRAGE. } No. 27325.

ROOM 3.

And now comes the plaintiff, & for replication to the defendants' amended answer denies each and every allegation in the defendants' amended answer, & asks for judgment & his costs.

By D. T. JEWETT,
His Att'y.

And afterwards, to wit, at the December term, A. D. 1881, of said court the following proceedings were had in said cause:

Trial Begun.

WILLIAM THOMAS
vs.
CHRISTIAN F. LIEBKE and CHARLES H. SCHRAGE. } No. 57325.

THURSDAY, *January 19th*, 1882.

Now, at this day, comes said parties, by their respective attorneys, & a jury being waived by said parties, this cause coming on for hearing is tried by the court upon the pleadings herein & the evidence and proofs adduced, and the court having heard, and not being fully advised of and concerning the premises, takes time to consider thereon.

9 And again, at the December term, A. D. 1881, of said court, the following further proceedings were had in said cause, to wit:

Judgment.

WILLIAM THOMAS
vs.
CHRISTIAN F. LIEBKE and CHARLES H. SCHRAGE. } 57325.

MONDAY, *January 30th*, 1882.

And now at this day the court being fully advised of and concerning the premises in this cause heretofore submitted to the court doth, from the evidence and proofs adduced, find the issues herein joined in favor of the plaintiff, and assess his damages at the sum of four hundred and ninety-two dollars and sixty-five cents; therefore it is considered by the court that the plaintiff recover of the defendants the damages aforesaid in form aforesaid as assessed, and also his costs and charges herein expended and have execution therefor.

And afterwards, to wit, on the 2nd day of February, A. D. 1882, the defendants filed their motion for a new trial in said cause.

And again, at the February term, A. D. 1882, of said court, the following further proceedings were had in said cause, to wit:

Mo. for New Trial Overruled.

WILLIAM THOMAS
vs.
CHRISTIAN F. LIEBKE *et al.* } 57325.

MONDAY, *February 13th*, 1882.

Now at this day the court being fully advised of and concerning the motion heretofore submitted herein for a new trial doth overrule said motion.

WILLIAM THOMAS
vs.
CHRISTIAN F. LIEBKE *et al.* } 57325.

WEDNESDAY, *March 1st*, 1882.

10 Now at this day comes said defendants, by their attorney and present to the court a bill of exceptions; which said bill of exceptions is allowed, signed and sealed by the court, filed herein, and made part of the record in this cause.

Appeal Allowed.

WILLIAM THOMAS
vs.
CHRISTIAN F. LIEBKE *et al.* } 57325.

FRIDAY, *March 24th*, 1882.

Now at this day the defendants herein file in this cause an affidavit and bond for appeal; which bond is approved by the court, and on their motion it is ordered by the court that an appeal to the

St. Louis court of appeals be granted them from the judgment in this cause.

Which bill of exceptions, affidavit for appeal, and appeal bond are in the words and figures following, to wit:

Bill of Exceptions.

In the Circuit Court, City of St. Louis, State of Missouri. December Term, 1881.

WILLIAM THOMAS
vs.
C. F. LIEBKE and CHARELS H. SCHRAGE.

Be it remembered that on this the 30th day of Jauuary, A. D. 1882, being the December term, 1881, of the circuit court, city of St. Louis, State of Missouri, room No. 3, his honor Judge Boyle presiding, comes pl'ff and def't, and, by consent, announced themselves ready for trial, and agreed to submit the cause to the court without the intervention of a jury.

D. T. Jewett appearing for pl'ff; G. M. Stewart appearing for def'ts.

Thereupon the plaintiff in support of this cause produced the following evidence, viz:

Testimony.

11 Mr. WILLIAM THOMAS, being duly sworn, was examined on the part of the pl'ff by Mr. JEWETT, and testified as follows:

Q. Are you the plaintiff in this case, Mr. Thomas?

A. Yes, sir.

Q. Did you know Mr. Liebke & Mr. Schrage in the summer of 1877?

A. Yes, sir.

Q. How were they acting, as individuals or partners?

A. As partners, I believe.

Q. Did you have only this one or many other transactions with them?

A. I had many other transactions with them; many notes.

Q. Do you know how they usually signed paper?

A. Yes, sir.

Q. In what way did they sign it, individually or in its firm name?

A. In the firm name.

Q. Did you ever see them do that?

A. Yes, sir; Mr. Liebke signed for the firm always.

Q. Well, what information have you that Mr. Schrage was a member of the firm?

A. I have seen him up there and know him as one of the partners of the firm. I supposed he was one of the members of the firm. Mr. Liebke alwa-s signed.

Q. Did Mr. Schrage act as one of the partners?

A. Yes, sir.

Q. Will you state about the transaction of this note, Mr. Thomas; if that note is in your possession now?

A. Yes, sir.

Q. Please produce it.

A. Here it is. (Hands note to counsel.)

Q. State whether this is the note sued upon here.

A. Yes, sir.

Q. Who signed it?

A. I signed it.

Q. Well, to whom is it payable?

A. To Liebke & Schrage.

Q. Whose indorsement is that on the back?

A. Liebke & Schrage.

Q. Whose indorsement in writing is that *in writing* on the back there?

A. The cashiers of the Mullanphy Bank.

Q. Was that made in your presence?

A. Yes, sir.

Q. Well, state what amount you paid to take up that note from the bank?

A. The amount specified there.

Q. When did you pay it?

12 A. When I took up the note; the amount was $435.

Q. What time was that?

A. It was two years age.

Q. Did you pay it on the date of the indorsement by the cashier?

A. Yes, sir.

Q. And that was indorsed on that date?

A. Nov. 11, 1879.

Q. Well, on what day did you pay that amount, then?

A. At that time.

Q. At that date?

A. Yes, sir, on November 14, 1879; the interest was calculated to the 11th, but the note was taken up on the 14th.

Q. Well, what time did you pay it, then?

A. On the 14.

Q. To whom did you pay it?

A. To this man—the cashier of the bank; Campbell, I think his name was.

Q. Where did you pay it?

A. At the bank.

Q. Did you pay it to him in his official capacity?

A. Yes, sir.

Here counsel for pl'ff read the note in evidence.

Q. Now, was there any writing signed by Liebke & Schrage at the time you gave them that note—a receipt showing they undertook to pay it, an obligation?

A. Yes, sir.

Q. Is that it?

A. Yes, sir.
Q. Who is it signed by?
A. Liebke & Schrage.
Q. When was it given to you?
A. It was given on that date—Aug. 4, 1877.
Q. Well, why does that differ from the date of the note?
A. Well, it includes three notes, two others with this one, given on this date.
Q. Why does the date of the receipt given differ from the date of the note?
A. Because they intended to take some notes up that came due in a day or two afterwards; they intended to provide for the
13 payment of a note that *that* was not due yet by a day or two.
Q. The receipt was dated, then, a day or two before the date of the note?
A. Yes, sir.
Q. When was this given to you; on the 4th of August, 1887?
A. Yes, sir; at the time of giving the note. The note was given a day or two ahead, of course.

Here counsel for pl'ff read the receipt in evidence, dated Aug. 4th, 1877.

Q. Who had the benefit of this note, Mr. Thomas?
A. They had. It was given for their accommodation.
Q. Did you ever get any benefit from it?
A. No, sir.
Q. Was there any consideration that you had that you gave them that note for?
A. No, sir.
Q. That receipt, then, expresses the purpose of the note, does it?
A. Yes, sir.
Q. For whose use and benefit was the note made?
A. For theirs, of course.
Q. Have you ever received from them any consideration since you paid that note?
A. No, sir.
Q. That is the balance that you paid them then due the — note, with interest?
A. Yes, sir.
Q. Which note is it in that receipt which is now due?
A. The $500 note.
Q. This note is for $500.
A. Yes, sir; I have got the other two, if you want to see them.
Q. No; the other two are not in suit. Then, at the time the endorsement was made by the cashier of the Mullanphy Bank, $485 was due?
A. Yes, sir; after giving them credit for what they had paid & charging the interest.
Q. And you had to pay that balance at the bank?
A. Yes, sir.

14 Cross-examined by Mr. STEWART:

Q. Mr. Thomas, this endorsement of $150 was paid by Liebke & Schrage?

A. I suppose so.

Q. It was paid on account of the 30 per cent. to be paid by them in bankruptcy?

A. I suppose so.

Q. You knew about it at the time?

A. No, sir; I did not know it. That is the endorsement of the cashier.

Q. Do you say you do not know they went into bankruptcy?

A. Yes, sir. I knew it. I suppose that is what it is paid for.

Q. You knew they paid 30 per cent. of that?

A. Yes, sir.

Q. And that this piece of paper was held by the Mullanphy Bank at that time?

A. Yes, sir; I suppose so.

Q. And they paid 30 cents on the dollar?

A. I suppose so; I don't know.

Q. Well, you had to give the bank the difference?

A. Yes, sir.

Q. He had paid 30 cents on the dollar?

A. Yes, sir.

Q. And that is the credit on here, $150?

A. Yes, sir.

Q. That is 30 per cent. of $500?

A. Yes, sir.

Q. Up to that time you had paid nothing on this note?

A. No, sir.

Q. You did not hold this note?

A. No, sir.

Q. But it was held by this bank?

A. They came on me for the balance.

Q. It was held by this bank?

A. Yes, sir.

Q. Where it had been discounted?

A. Yes, sir.

Q. And they held it at the time that Liebke & Schrage went into bankruptcy?

A. Yes, sir.

Q. And when they gave their notes they gave them to the holder of this paper?

A. I suppose so.

Q. And they paid their notes?

A. Yes, sir.

Q. You knew of their composition with their creditors?

A. Yes, sir.

Q. You knew all about their bankruptcy matters, I suppose?

A. No, sir; I am not a lawyer. I knew they went into bankruptcy, or tried to, & had a composition with their creditors.

Q. All that you knew?

15 A. I knew it, of course; everybody did.

Q. You attended the meetings and was the president of the meetings?

A. I was not the president; I attended.

Q. Did you say you did not attend their meetings?

A. Not at the time they made a composition, I attended their meetings before that time.

Q. You were the chairman of their meetings?

A. No, sir; but I was on the committee.

Q. You signed the agreement allowing them to be discharged on payment of 30 cents on the dollar of their indebtedness?

A. No, sir; I don't think I did; if I did it, I did so under a misapprehension, because when the meeting of creditors was called I asked Mr. Liebke if I had any interest in the matter, & he said——

Q. Never mind that. I will ask you if that is your own signature? (Shows papers to witness.)

A. Yes, sir, that is my signature.

Q. That is the composition?

A. Yes, sir. They told me not to come to the meeting; that I was not a creditor.

Re-examination by Mr. JEWETT.

Q. Where did you sign this paper?

A. I don't know; probably in Mr. Stewart's office; I don't know.

Q. Somebody brought it to you?

A. I suppose so.

Q. Were you at a meeting of the creditors at all?

A. No, sir. I was told not to come to the meeting.

Q. You did not go to the meeting?

A. No, sir; yes, I went to the previous meetings, the first meetings that were held, but not the composition meetings, because I asked if I must go, and Mr. Liebke said I was not a creditor; he did not owe me anything.

Q. What meeting was it; of the meetings of the creditors?

A. I don't know; a preliminary meeting, I suppose.

Q. Was that meeting prior to the signing of this paper?

A. I don't know, probably it was.

16 Q. Have you any recollection when you signed this paper?

A. No, sir. It might have been in a beer saloon. Probably it was.

Q. Did you sign it at a public meeting of his creditors?

A. No, sir, I think not.

Q. Do you remember that they brought it to you to sign?

A. No, sir.

Here the plaintiff rested his cause. Whereupon the def't in support of his cause produced the following evidence, viz:

Mr. WILLIAM MORGAN, being duly sworn, was examined on the part of the def't by Mr. Stewart and testified as follows:

Q. What is your full name?

A. Wm. Morgan.

Q. What is your business?

A. I am deputy clerk in the U. S. dist. court for the eastern dist. of Missouri.

Q. How long have you been there?

A. Seven or eight years.

Q. Do you hold the records of that court in your hands which contain the bankruptcy matters of Liebke & Schrage?

A. Yes, sir.

Q. Will you state the date that appears there of filing the petition in bankruptcy in that matter?

Objected to by counsel for pl'ff: "They can't prove the records of the U. S. court by a deputy." The court overruled the objection. Counsel for pl'ff then and there duly excepted to the ruling of the court.

Q. Will you look at your records and state the date of filing that petition as shown by your records?

A. The 3d of October, 1877.

Q. It is a petition in bankruptcy filed by Liebke & Schrage?

A. Yes, sir.

Q. Please give the number of the case.

A. 1538.

Q. Give the date of the adjudication?

A. The 13 of Oct., 1877.

17 Will you look at your record and find if there was a composition made; and, if so, what time?

A. Well, the first in regard to a composition was an order of court filed. The order for a composition meeting was filed the 4th of October, 1877.

Q. When was it granted?

A. The order for a composition was made the 11th of Oct., 1877, and the meeting was called for Friday, the 26th of Oct., 1877.

Q. Will you look and see if there was a proposition made at that meeting by your records?

A. Yes, there seems to be a proposition for a composition.

Q. What is the date?

A. It was filed on the 26th of Oct.

JEWETT: What was that?

A. A proposition for a composition.

JEWETT: We will admit that the proposition contains all the statements made in the answer concerning it, and that the proposition was dated Oct. 26, 1877.

STEWART: Will you look and see whether there is any record showing the acceptance of the proposition by the creditors?

A. Yes, sir; there appears to be an acceptance of it.

[STEWART]: Filed on that date?

A. Filed on the 26th, the same date.

JEWETT: Read the names of the creditors who accepted that proposition.

STEWART: We admit that Mr. Thomas' name is not among the creditors who accepted the proposition.

Q. Now, Mr, Morgan, will you please look before we go any further and see if you find among the schedules a note which corresponds with the one which has been offered in evidence, a note held by the Mullanphy Savings Bank, dated August 8, 1877?

A. Yes, sir; in Schedule "A," a note for $500.

JEWETT: What creditor held that note—the Mullanphy Savings Bank?

A. Yes, sir.

STEWART: Mr. Morgan will you look & see if there is any record showing that there was an approval by the court in accordance with this proposition?

18 A. After composition there was a hearing called.

Q. A hearing called for the purpose of approving the meeting?

A. An order was made on the 29th of Oct. & filed.

Q. When was the meeting to be called?

A. On the 7th of Nov., 1877.

Q. Now will you see if there is a report of the proceedings of that meeting?

A. The confirmation by the creditors was on the 7th of Nov., 1877. It is on file here.

JEWETT: That is the confirmation by the creditors?

A. Yes, sir.

Q. Are the creditors names there or not?

A. Yes, sir.

Q. See if Mr. Thomas' name is among them?

[A]. It was admitted that Mr. Thomas' name was not among them.

Q. Will you look and see if the Mullanphy Bank's name is among them?

Objected to by counsel for defendant as immaterial.

A. I think not, sir.

Q. You don't see the Mullanphy Bank's name there?

A. No, sir.

STEWART: Will you look and see if there is a record showing the conformation by the court—a record of the court in accordance with that proposition?

A. Yes, sir; on the 8th of Nov. there was a confirmation of the proposition proceedings.

Q. Will you please read the record of that date, Mr. Morgan, in the matter of Christian T. Liebke and Charles H. Schrage, bankrupts?

[A]. At St. Louis, in said district, Thursday the 8th day of Nov., 1877, No. 1538, this day came on to be heard before the court the matter of the resolution of the creditors of the copartnership and *and* individual estates of said bankrupts heretofore passed herein, & the court having heard and examined said matter, and it

19 appearing to the satisfaction of said court that the said resolution accepting the proposition of composition were duly passed, as by law required, and, also, that the same is for the inter-

est of all concerned, it is therefore ordered that said resolutions be recorded.

Q. Is there a subsequent order?

A. There is a little more of the court. The composition and resolution is ordered to be recorded.

Q. And it is so recorded, I take it?

A. Yes, sir; & then it is further ordered that said proposition be effected and carried out under the supervision and direction of Lucien Eaton, the register in charge of the case.

Q. Will you look and see if there is a record showing that it was carried out under that supervision?

A. Here is an order made Dec. 7th, 1877.

"Upon consideration by the court of the report of Lucien Eaton, Esquire, the register in charge of this case, herein filed on yesterday setting forth that said bankrupts have fully complied with the terms of the composition by them heretofore entered into with their creditors herein, it is ordered that the petition for adjudication in bankruptcy heretofore filed by said bankrupts herein, together with all proceedings had thereunder, be, and the same are now hereby, dismissed at the costs of said bankrupts."

JEWETT: What is the date of that?

[A.] The first of Dec., 1877.

Q. That is before the composition notes were paid?

A. Yes, sir; they were not due yet.

STEWART: Is there any subsequent order or records there which pertain directly to this composition?

A. No, sir; that is the final order in the matter.

Here counsel for defendant made a formal offer in evidence of the records that have been read.

Cross-examination by Mr. JEWETT:

Q. Mr. Morgan, is there any record of that paper? (Shows paper to witness.)

A. I think not. I nevery saw anything like it.

Q. Will you examine your records there; I want your evidence as clerk of the court as to whether there is any paper of that kind in the court record?

It is admitted that the paper or copy of it was not among the records of the court.

Q. These papers that you have read here are in the shape of distinct papers, ain't they?

A. Yes, sir.

Q. Filed in the court?

A. Yes, sir; and there are some copies of the record.

Q. You make up the records you read by filing and binding the different papers?

A. Yes, sir; and the orders of the court and copies of different records.

Q. But the petition of the parties and the consent of the creditors

and all those things are in the shape of papers bound in a volume, are they?

A. Yes, sir; and they constitute the record.

Q. They are not copied into any book in *in* the court?

A. Yes, sir.

Q. Are all of those papers copied into some other book in your court?

A. Yes, sir; very near all of them, but not all. The petitions are not copied but the orders are.

Q. For instance, the plaintiff's application to be allowed a composition?

A. No, sir; that is not copied in full, simply the order.

Q. The petition is only bound into a book?

A. Yes, sir.

Q. The order is copied in the book?

A. Yes, sir.

Q. Then all the orders that the court made are put in the book?

A. Yes, sir; & I have to copy the orders here which I read.

Q. But the petition of the creditors & other terms, their proposition and so on, &c., are in no record book, except that paper bound in there?

A. Yes, sir; the order approving the composition proceed-
21 ings and the order of the court; the whole composition is set out in that order.

Q. Then neither the petition which they made or the proposition are entered in any other book?

A. Not the petition, but the proposition of the creditors is set out in full.

Q. But the rest of the petition is not?

A. No, sir.

Q. Now, is the report of the meeting of the creditors copied into any other book but filed with the papers in court and bound in a volume the-?

A. Well, there was one report of the meetings of creditors; that is the meeting at the register's. The report of the register is copied into record.

Q. What papers you read, then, are all filed in the court?

A. Not all; some are original orders of the court, and some are filed in the court.

Q. Any of the papors that are not original papers, such as the orders of the court, an order is given and they are filed in court?

A. Yes, sir.

Q. Are those papers you read, then, marked "filed in court," and set out?

A. Yes, sir; either filed with the court or filed with the register.

Q. Well, the last order you read was Decem. 1st, 1877?

A. Yes, sir.

Q. At that time all the proceedings were dismissed from the court?

A. Yes, sir.

Q. And after that no records were made by the court in this matter?

A. No, sir; I don't think there is any further record. There may have been about the withdrawing of a note, or something of that kind.

Q. Well, you never heard of that paper before, did you? (Shows papers to witness.)

A. No, sir; I don't think I have; I have no recollection of it; of ever seeing a paper of this kind.

Q. There is no paper or copy of it on your file?

A. Not that I know of; I don't think there is.

22 Q. Well, then, it is in no way a part of the proceedings in bankruptcy, is it?

A. If it was a part of the proceedings it would be filed among the papers.

The paper here referred to is the paper shown Thomas by de'f'ts' att'ys, which Thomas said he signed.

Mr. C. F. LIEBKE, being duly sworn, was examined on the part of the def't by Mr. STEWART, & testified as follows:

Q. You are one of the defendants here?

A. Yes, sir.

Here it was admitted that the note was a partnership note, & scheduled by the Mullanphy Bank.

Q. I suppose you know Mr. Thomas?

A. Yes, sir.

Q. This note that has been spoken of here you recognize?

A. Yes, sir.

Q. That was one of the notes that Mr. Morgan spoke of, scheduled to the Mullanphy Bank?

A. Yes, sir.

Q. Have you all the notes which were scheduled?

A. Yes, sir.

Q. I want to know if you paid this note to the Mullanphy Bank.

A. Yes, sir, we did.

Q. Let me see it. These notes are for $468?

A. Yes, sir; one was for $500. The one in controversy and other paper the that Mullanphy Bank held was $8572. The composition notes on that was $2700.

Q. Will you look and see if there is a note showing the exact amount of this note?

A. Yes, sir. There is one here of $25.88, the proportion of this note.

Q. And there was four of those notes?

A. There was six of them.

JEWETT: Six of your composition notes of $25.38 each, do you say?

A. Yes, sir. That is the bank's memorandum of this am't, $25.38, on this note.

STEWART: Will you state whether or not your firm paid those composition notes?

A. Yes, sir, we paid them.

Q. They are all paid, are they?

A. Yes, sir.

Q. These are the composition notes?

A. Yes, sir.

23 Q. They are all marked "paid," I believe, except one?

A. They are all marked "paid."

Q. Will you state whether they were delivered to the Mullanphy Bank?

A. Yes, sir; and accepted by them and afterwards paid by us, and then they gave the notes up as they were paid and marked them as they were paid.

JEWETT: They gave the composition notes up?

A. Yes, sir.

STEWART: At what time, did you know, as a matter of fact, that the Mullanphy bank held this note?

A. Yes, sir; I did know.

Q. And they were the owners of it, were they?

A. Yes, sir.

Q. By whom was it discounted, then?

A. By us.

Q. And they owned the note?

A. Yes, sir.

Q. At the time of your composition in bankruptcy and discharge?

A. Yes, sir.

Q. And you know of your own knowledge that Mr. Thomas did not own the note at that time?

A. I know positively.

And this was all the evidence.

And thereupon the plaintiff asked and the court gave the following instructions in his behalf:

Plaintiff's Instruction Given.

THOMAS *vs.* LIEBKE *et al.*

1st. The court is requested to declare the law to be that the proceedings in bankruptcy put in evidence by the defendants, wherein the said defendants were allowed to effect a compromise with certain creditors through the United States dist. court as the same appears of record in said court is no defence to this action; that the plaintiff is entitled to recover.

2nd. The court is requested to declare the law to be that upon all the evidence in the case the plaintiff is entitled to recover.

To the giving of which instructions the defendants then and there duly excepted.

And the defendants asked the court to give the following instructions, which the court refused:

Defendants' Instruction Refused:

If the court, sitting as a jury, finds from the evidence that after the note described in the petition was made and delivered to the defendants, and before the same became due, they were adjudicated bankrupts on their own petition by the U. S. district court of the eastern district of Missouri, an- that thereafter, and in November, 1877, they effected a composition in bankruptcy with their creditors under and by virtue of the laws of the United States concerning bankruptcy then in force; that the owner and holder of the note described in the petition was at the time of said composition the Mullanphy Bank; that said bank had due & proper notice of the proceedings which resulted in said composition, and received and accepted the payments which defendants agreed to and did make in pursuance thereof; then defendants became thereby discharged from all liability on account of said note and of the indebtedness which had *anser* by reason of their having endorsed & negotiated the same, and plaintiff cannot recover in this action on account or by reason of his having paid any balance that may have remained unpaid by defendants on said note to the Mullanphy Bank.

If the court, sitting as a jury, finds from the evidence that after the note described in the petition was made and delivered to the defendants and before the same became due, they were adjudicated bankrupts, on *on* their own petition, by the district court of the eastern district of Missouri, and that thereafter, and in November, 1877, they effected a composition in bankruptcy with their
25 creditors, under and by virtue of the laws of the United States concerning bankruptcy then in force; that the owner and holder of the note described in the petition was at the time of said composition the Mullanphy Bank; that said bank had due and proper notice of the proceedings which resulted in said composition, and received and accepted the payments which defendants agreed to and did make in pursuance thereof; then defendants became thereby discharged from all liability on account of said note and of the indebtedness which had arisen by reason of their having endorsed and negotiated the same, and the defendant could not make himself a creditor of defendants by subsequently paying to said Mullanphy Bank any balance that may have remained unpaid on said note.

If the court, sitting as a jury, finds from the evidence that the firm of Liebke & Schrage, defendants, filed their petition in the United States district court for the eastern district of Missouri on or about the 3d day of October, 1877, asking to be adjudged bankrupts, and that they were so adjudged by said court on or about the 13th day of October, 1877; that in the interval of those dates they made a proposition of composition of their debts to their creditors, by which they proposed to pay them thirty cents on the dollar of the same by their notes, payable in three, six, nine, twelve, eighteen and twenty-

four months, & secured by deed of trust; that among their creditors to whom this proposition was made, and who were named in the list of creditors presented at the meeting of the creditors held for the purpose of said composition, and who were duly notified of the same, was the Mullanphy Bank; that at said date the said bank was the owner & holder of the note described in the petition; that said proposition was accepted by the requisite number & amount of
26 their said creditors by a resolution by them adopted at the meeting called and held for that purpose, and that said creditors did thereby agree upon the payment to them of the amount stated in said proposition and resolution to discharge defendants from all further liability on account of the same; that such resolution was subsequently ratified and confirmed by two-thirds in number & one-half in value of all their creditors; that on or about the 8th day of November, 1877, these defendants presented said resolution, together with the statement of their assets & liabilities which they had presented to their creditors at said meeting, to the said district court, and the court did duly inquire, upon hearing, whether such resolution had been passed in the manner directed by law, and became satisfied that it had been so passed, and that it was for the best interest of all of the defendants' creditors that the same should be approved, and thereupon the court ordered and the said resolutions were recorded in said court and said statement of assets and liabilities filed therein; that thereafter the defendants did execute and deliver to the creditors their notes, as proposed by them and accepted in said resolution, & secured the same by deed of trust; that the Mullanphy Bank received & accepted notes of defendant in composition for the note described in the petition; that defendants, before the bringing of this action, had paid in full of their said composition notes as they became due, including those held by the Mullanphy Bank, then the defendants became discharged thereby from the indebtedness which had arisen in consequence of their having endorsed and negotiated said note to said Mullanphy Bank, and from all liability on account of the same; and the plaintiff cannot recover in this action, although he may have paid the said bank the amount remaining due on said note after the said note became due.

27 To which action of the court in refusing the same the defendants then and there duly accepted, and there was a verdict and judgment for plaintiff for $492.60, and thereupon and on the 2nd day of February, 1882, the defendants filed their notice for a new trial, in words and figures following, to wit:

Motion for New Trial.

In the Circuit Court, City of St. Louis.

WILLIAM THOMAS, Plaintiff,
vs.
CHRIST F. LIEBKE *et al.*, Defendants.

And now come the defendants and move the count to set aside

the verdict and judgment rendered on the 30th inst. against the defendant to grant them a new trial for the following reasons:

1st. The court gave improper and illegal instructions at the instance of the plaintiff.

2nd. The court refused legal and proper instructions offered by the defendant.

3rd. The verdict and judgment are against the law and the evidence.

G. M. STEWART AND
PAUL BAKEWELL,
For Defendants.

Which motion was heard and duly considered by the court, and by it overruled, on the 13th day of February, 1882, to which action of the court in overruling said motion for a new trial defendants then and there duly excepted, and now except, and file this their bill of exceptions, and ask that the same may be signed and sealed by this court and made part of the records thereof; which is done accordingly.

WILBUR F. BOYLE, *Judge.* [SEAL.]

28 STATE OF MISSOURI, } ss:
City of St. Louis. }

Christian F. Liebke, being duly sworn, makes oath and says: That the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

CHRISTIAN F. LIEBKE.

Sworn and subscribed [to] before me, this 23d day of March, A. D. 1882.

CHAS. F. VOGEL, *Clerk.*

29 Know all men by these presents that we, C. F. Liebke, as principal, and John F. Reller and John W. Davitt, as sureties, are held and firmly bound unto William Thomas in the sum of one thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at St. Louis, this 23rd day of March, A. D. 1882.

The condition of the above obligation is such that whereas Christian F. Liebke and Charles H. Schrage have appealed from the judgment rendered against them and in favor of William Thomas in the circuit court, city of St. Louis, for the sum of four hundred and ninety-two dollars and sixty-five cents, together with costs:

Now, if said appellants shall prosecute their appeal with due diligence to a decision in the St. Louis court of appeals, and shall perform such judgment as shall be given by the St. Louis court of appeals, or by the supreme court of the State of Missouri, in the event of an appeal thereto; or such judgment as the St. Louis court of appeals, or said supreme court, in the event of appeal as aforesaid, may

direct the circuit court, city of St. Louis, to give, and, if the judgment, or any part thereof, be finally affirmed, will comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be awarded against them by the St. Louis court of appeals, or said supreme court, in case of appeal as aforesaid, then this obligation to be void; otherwise, to remain in full force and effect.

CHRISTIAN F. LIEBKE, [SEAL.]
JOHN F. RELLER. [SEAL.]
J. W. DAVITT. [SEAL.]

Approved in open court this 24th day of March, 1882.
Attest: CHAS. F. VOGEL, *Clerk.*

30 STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Charles F. Vogel, clerk of the circuit court, city of St. Louis, do hereby certify the foregoing to be a true, full, and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this fifteenth day of May, A. D. 1882.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

And afterwards, at the October term, A. D. 1882, of the Saint Louis court of appeals, to wit, on the 13th day of November, the following assignment of error was filed in said cause, to wit:

31 In the St. Louis Court of Appeals.

WILLIAM THOMAS, Respondent,
vs,
C. F. LIEBKE *et al.*, Appellants.

And now come the said appellants and say that in the record and proceedings of the court below, in the above-entitled cause, there is manifest error, and for error said appellants assign the following, to wit:

1. That said court admitted improper and illegal testimony offered by respondent.
2. That said court rejected proper and legal testimony offered by appellants.
3. That the court gave to the jury improper and illegal instructions.
4. That the court refused to give to the jury proper and legal instructions offered by appellants.
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.

9. That the judgment was rendered in favor of the respondent, when it should have been rendered for the appellants.

That said court overruled the motion for a new trial made by appellant-.

G. M. STEWART AND PAUL BAKEWELL,
For Appellants.

32 And afterwards, at the same term of said court, the following judgment was rendered in said cause, to wit:

Judgment.

Appeal from the Circuit Court, City of Saint Louis.

WILLIAM THOMAS, Respondent,
vs.
CHRISTIAN F. LIEBKE and CHARLES H. SCHRAGE, Appellants.

TUESDAY, *December 12th*, 1882.

Now, again come the parties aforesaid, by their respective attorneys, and the court, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said circuit court, city of Saint Louis, be in all things affirmed and stand in full force and effect, and that the said respondent recover of the said appellants his costs and charges herein expended and have execution therefor. Opinion filed.

Which said opinion is in the words and figures following, to wit:

Opinion.

Appeal from Saint Louis Circuit Court.

WM. THOMAS, Respondent, *vs.* C. F. LIEBKE *et al.*, Appellants.

The substantial facts and the questions of law arising upon them in this case are identical with those in Thomas *vs.* Liebke *et al.*, as reported in 9 Mo. App., 424. For the grounds of our present decision we here adopt the opinion there delivered, and direct that it be incorporated in the record of this cause.

33 Counsel for the appellant ask our attention to a manuscript copy of the decision under the English bankruptcy act of 1861, in Hatch *vs.* Hatch, 28 Law Times, N. S., 506 Ex. The relations between the several parties were somewhat similar to those appearing in the present case. It was held that the composition or "deed of arrangement" was effectual to discharge the bankrupt defendant of the plaintiff's claim arising out of a payment made by him as surety after the composition. In the case before us the defendants claim a like discharge from liability on account of a payment made by the plaintiff as accommodation-maker after the composition, although he was not a party to the composition proceedings and was not named in the list of creditors produced when the resolution was passed. There are several reasons why the decision referred to can avail nothing for the present defendants. One will suffice: The English bankruptcy act, after providing for a composi-

tion and "deed of arrangement, signed by or on behalf of three-fourths in number and value of all the creditors of the bankrupt," further provides that "if the court shall be shall be satisfied that the deed has been duly entered into and executed, and that its terms are reasonable and calculated to benefit the general body of the creditors under the estate, it shall by order make a declaration of the complete execution of the deed and shall direct the same to be registered with the chief registrar, and shall also, if he thinks fit, annul the bankruptcy; and such deed shall thereafter be as binding in all respects on any creditor who has not executed the deed as if he had executed it, provided such deed be registered with the chief registrar in manner directed by the order." Stat. 24 & 25,
34 Vict. Cap. cxxxiv, § 17; 7 Jurist, part II Supplement, Sept. 28, 1861, page 132.

The American bankruptcy law, however, exactly reverses a material feature above shown. It provides for a resolution instead of a deed; requires the debtor to produce a statement "showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due." It then provides that the composition and resolution "shall be binding on all the creditors whose names and addresses, and the amounts of the debts due, and to whom, are shown in the statement of the debtor produced at the meeting at which the resolution shall have passed, but shall not affect or prejudice the rights of any other creditors." U. S. Rev. Stat., § 5103.

The judgment of the circuit court is affirmed. All the judges concur.

EDW'D. A. LEWIS.

And afterwards, at the same term of said court, to wit, on the 22nd day of December, the following motion for a rehearing was filed in said cause, to wit:

Motion for Rehearing.

In Court of Appeals. Oct. Term, 1882.

WILLIAM THOMAS, Appellant, *vs.* C. F. LIEBKE *et al.*, Defendants.

And now come the appellants and move the court to set aside the judgment rendered in this case affirming the judgment of the circuit court, and to grant them a rehearing for the following reasons: In rendering its opinion the court overlooked the provisions of the original bankrupt act of 1867 and its provisions which are applicable to this case respecting the discharge of the debtor
35 from liability to his sureties, which are fully pointed out in the appellant's brief.

G. M. STEWART,
For Appellants.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Mo. for Rehearing Overruled.

WILLIAM THOMAS, Respondent,
vs.
CHRISTIAN F. LIEBKE *et al.*, Appellants. } 2495.

TUESDAY, *February 6th*, 1883.

Now, at this day, the court having fully considered said appellants' motion for a rehearing of this cause, doth overrule the same.

And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

WILLIAM THOMAS, Respondent,
vs.
CHRISTIAN F. LIEBKE *et al.*, Appellants. } 2495.

TUESDAY, *February 20th*, 1883.

Now come the appellants, by their attorney, and file a writ of error from the Supreme Court of the United States of America, and also a citation, and also file their bond in the penal sum of one thousand dollars, with John F. Reller and J. W. Davitt as sureties, which bond is by the court approved. It is therefore ordered by the court that said writ of error operate as a supersedeas herein.

Which said appeal bond is in the words and figures following, to wit:

36 The United States of America to William Thomas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the St. Louis court of appeals of Missouri, wherein Christian F. Liebke and Charles H. Schrage are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward A. Lewis, chief justice, judge of the St. Louis court of appeals of Missouri, this 21st day of February, in the year of our Lord one thousand eight hundred and eighty-three.

EDW'D A. LEWIS,
Chief Justice of the St. Louis Court of Appeals, District of Missouri.

37 [Endorsed:] 2495. United States Supreme Court *et. al.*, P. E., *vs.* William Thomas, D. E. Citation. Filed Feb'y 20th, 1883. Jos. F. Baier, clerk.

Executed in the city of Saint Louis on the 13th day of July, 1883, by delivering to D. T. Jewett, att'y for William Thomas, D. E., a copy of citation, of which this is the original.

WM. BAGGOT,
Marshal St. Louis Court of Appeals.

38 Know all men by these presents that we, C. F. Liebke, John F. Reller, and J. W. Davitt, are held and firmly bound unto William Thomas in the full and just sum of one thousand dollars, to be paid to the said William Thomas, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of February (1883), in the year of our Lord one thousand eight hundred and [eighty-three].

Whereas lately at the October term, 1882, of the St. Louis court of appeals, in the State of Missouri, in a suit depending in said court between William Thomas, plaintiff, and Christian F. Liebke and Charles H. Schrage, defendants, judgment was rendered against the said Christian F. Liebke and Charles H. Schrage, and the said Christian F. Liebke and Charles H. Schrage having obtained writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William Thomas, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said Christian F. Liebke and Charles H. Schrage shall prosecute said writ to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

(Signed) C. F. LIEBKE. [SEAL.]
JOHN F. RELLER. [SEAL.]
J. W. DAVITT. [SEAL.]

Sealed and delivered in presence of—
G. M. STEWART.

Approved in open court this 20th day of February, A. D. 1883.
Attest: JOS. F. BAIER, *Clk.*

39 [Endorsed:] No. 2495. United States circuit court, eastern district of Missouri. C. F. Liebke *et al*, P. in E., *vs.* William Thomas, D. in E. Bond, $1,000. C. F. Liebke, principal. Jno. F. Reller, J. W. Davitt, sureties. Filed — day of —, 187-. —— ——, clerk.

40 In the Supreme Court of the United States.

CHRISTIAN F. LIEBKE and CHARLES H. SCHRAGE, Plaintiffs in Error,
vs.
WILLIAM THOMAS, Defendant in Error.
} Nos. 300 and 635.

It is hereby agreed and stipulated by and between the parties hereto, through their respective attorneys, that the above-styled cases may be consolidated and argued together, and that the record in case 597

shall be printed and serve as the record on which both cases shall be argued and decided.

G. M. STEWART,
Att'y for Plaintiffs in Error.
B. GRANTZ BROWN AND
ALEX. YOUNG,
Att'ys for Defendant in Error.

41 [Endorsed:] Sup. Court U. S. 1884, Oct'r term. No. 300. Christian F. Liebke & *al.*, pl'ff in error, *vs.* William Thomas, and Christian F. Liebke & *al.*, pl'ffs in error, *vs.* William Thomas. 635. Stipulation to consolidate & argue together on record in No. 597. Filed April 20, '85.

[Endorsed:] No. —. Term, —, 188–. Wm. Thomas, D. E., *vs.* C. F. Liebke *et al.*, P. E. Transcript. Error to St. Louis court of appeals. D. T. Jewett, att'y for D. E., Geo. M. Stewart, att'y for P. E. Filed —, 188–. ——, clerk. $21.40 transcript fee, paid by ——. $10.00 docket fee, paid by ——. No. 2495. Court of appeals. No. 57325. Circuit court. No. 3.

Endorsed on cover: St. Louis court of appeals. No. 300. Christian F. Liebke and Charles H. Schrage, plaintiffs in error, *vs.* William Thomas. Filed 25th September, 1883.

116-605-1609

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

CHRISTIAN F. LIEBKE AND CHARLES H. SCHRAGE,
Plaintiffs in Error,
vs.
WILLIAM THOMAS,
Defendant in Error.
} *No. 300.*

STATEMENT AND BRIEF OF PLAINTIFFS IN ERROR.

G. M. STEWART,
For Plaintiffs in Error.

Pierce Bros., Printers, 118 N. Third Street, St. Louis.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

CHRISTIAN F. LIEBKE AND CHARLES H. SCHRAGE,
Plaintiffs in Error,
vs.
WILLIAM THOMAS,
Defendant in Error.
} *No. 300.*

STATEMENT OF PLAINTIFFS IN ERROR.

By a stipulation filed by counsel in this case, it is consolidated with No. 597, and the record in the latter is thereby made the record for both cases.

The cases are precisely the same as regards the question presented to this court. Their history, and consequently the records, are somewhat different. Case No. 300 was begun in the St. Louis Circuit Court, and the plea of discharge in bankruptcy was sustained as a complete defense. On appeal, by the plaintiff in that suit (defendant in error here), to the St. Louis Court of Appeals, the judgment of the lower court was reversed and the cause remanded. From that judgment plaintiffs in error here appealed to the

Supreme Court of Missouri, and the judgment of the Court of Appeals was there affirmed, and plaintiffs in error sued out their writ of error from this court.

No. 597 was begun by the same plaintiff against the same defendants, on a similar cause of action, in the St. Louis Circuit Court, where the same plea was interposed as in No. 300. In that case, however, the plaintiff joined issue on the plea of discharge in bankruptcy, and the case was tried on the issue thus joined and a judgment rendered against the plea and in favor of plaintiff's cause of action. Appeal was taken from this judgment by the plaintiffs in error here, to the St. Louis Court of Appeals, and it was there affirmed. The amount involved in that case not being sufficient to permit an appeal to the Supreme Court of Missouri (Art. 6, Sec. 12, of Constitution of Missouri, 1875), writ of error was sued out from this court to the St. Louis Court of Appeals.

In case No. 300 the question of the sufficiency of the plea of discharge in bankruptcy was raised by a motion to strike it out—a practice known to the Missouri code.

In No. 597, as before stated, issue was taken on this plea, and following the previous decision of the St. Louis Court of Appeals in No. 300, it was held insufficient, as appears from the declarations of law given and refused by the trial court, which are herein set out, and also by the judgment of the St. Louis Court of Appeals.

The action in each case is to recover from plaintiffs in error money which defendant in error had paid for their accommodation.

The allegations of the petition in No. 597 are essentially the same as in No. 300, and are as follows:

"Plaintiff says that the defendants, on and before the 8th day of August, 1877, were copartners in business in the City of St. Louis, Mo., under the name and style of Liebke and Schrage, and that on the said 8th day of August, 1877, this plaintiff, at the instance and request of said defendants, and for their use and benefit and accommodation, and without any consideration paid by them to him or due from him, did, at St. Louis, Missouri, on
4 the 8th day of August, 1877, make and execute his negotiable promissory note of that date, wherein and whereby he promised to pay to the order of the said Liebke and Schrage the sum of five hundred dollars, at the North Western Savings Bank, in three months after said date of said note, with interest at ten per cent. per annum after maturity, and that he then and there delivered said note to the defendants, to be sold and used by them for their own use and benefit; and at the time of said delivery the said defendants then and there admitted and acknowledged that said note was made for their use and accommodation, and agreed that they would take care of and pay the same when it became due, and would hold the plaintiff harmless from said note.

And plaintiff says that said Liebke and Schrage took said note and sold the same for their own use and benefit, and used the proceeds of the same, but plaintiff says that said Liebke and Schrage wholly neglected and refused to pay the same when it became due, or at any other time, as they had agreed to do, except a small sum which was endorsed on said note, and that this plaintiff was compelled to pay, and did pay, the same to the Mullanphy Bank, which was the then owner and holder of said note in St. Louis, on the 14th day of November, A. D. 1879, at which time the balance due on said note was the sum of four hundred and thirty-five dollars, which sum this plaintiff then and there paid to said bank on the day last aforesaid named, and then paid and took up said note. And plaintiff says that said defendants, or either of them, has never paid to him, or

any one for him, in any way, any part or portion of the said sum of four hundred and thirty-five dollars so
5 paid by him as aforesaid, though often requested to do so by this plaintiff, but said defendants have wholly neglected and refused so to do, to the great damage of the plaintiff. Wherefore plaintiff asks judgment against said defendants for the said sum of four hundred and thirty-five dollars, with interest on the same at the rate of six per cent. per annum from said 14th of November, 1879, to date of judgment, and for his costs.

ANSWER.

That part of the answer which is material contains the following plea:

"And further answering, defendants say that, on the 3d day of October, 1877, they filed their petition in the District Court of the United States for the Eastern District of Missouri, in bankruptcy, asking to be adjudged bankrupts; and thereupon such proceedings were had in said matter that defendants were adjudicated bankrupts on the 13th day of October, 1877; that thereafter such proceedings
6 were had in said matter, as that defendants made to their creditors a proposition for a composition of their indebtedness to them at a meeting called for that purpose, as provided by the laws of the United States concerning bankruptcy then in force, and held on the 26th day of October, 1877, in said district, of which plaintiff was duly notified.

Defendants say that at such meeting they duly presented a schedule or statement showing their assets and the names of the persons to whom they were indebted, how and in what amount, and the addresses of their various creditors; and that all their creditors were duly notified of such meeting, including the persons who then held and were the owners of the notes and acceptances described by the plaintiff in his petition; and that thereupon a majority in

number and three-fourths in value of their creditors passed a resolution at said meeting accepting the proposition made them by defendants, which resolution was subsequently confirmed by the signatures of these defendants and two-thirds in number and one-half in value of all their creditors, including the persons who were then the owners and holders of the notes and acceptances described by plaintiff.

Defendants further say that, by the terms of said composition and resolution, they agreed to pay their creditors thirty per centum of their indebtedness to them in six equal installments—payable, respectively, in three, six, nine, twelve, eighteen and twenty-four months after date, said payments to be evidenced by the notes of these defendants and secured by a deed of trust upon the property in said proposition described; and that their said creditors agreed to and did accept the same and discharged the
7 defendants from all further liability on account of the indebtedness of these defendants to them, including that sued for in this case.

And further, defendants say that subsequently such proceedings were had in said matter that on the 8th day of November, 1877, these defendants presented the aforesaid resolution, with aforesaid statements of their assets and liabilities or debts, to the said court, and thereupon, after having given the notice required by law, the said court did, upon hearing, inquire whether such resolutions had been passed in the manner directed by law, and became satisfied that it had been so passed, and that it was for the best interest of all defendants creditors, and all those concerned, that the same should be approved; and thereupon, on said last-named day, said court did cause said resolution to be recorded in said court, and said statement of assets and debts to be filed therein, where they are, and remain of record in said court.

Defendants further state that, in pursuance of said resolution and its acceptance by their creditors, and the approval and the recording of the same by said district court,

they executed and delivered to all of their said creditors, including the holders and owners of the notes and acceptances described by plaintiff, their notes as by said resolution and the orders of the said court respecting the same required, and also executed and delivered to certain persons named therein as trustees their certain deed of trust of that date upon the property therein named to secure the same as in said resolution provided, and in all respects complied with the terms and conditions of said resolution and the orders of the court made in pursuance thereof, and that they paid said composition notes as they matured, including those given for indebtedness sued on in this case; and that
8 thereby and in virtue of said composition and proceedings above described they became and now are discharged from all liability on account of the indebtedness or liability stated by the plaintiff in his petition.

Defendants, therefore, ask for judgment.

REPLICATION.

And now comes the plaintiff, and, for replication to the defendants' amended answer, denies each and every allegation in the defendants' answer, and asks for judgment and his costs.

EVIDENCE.

The evidence in support of the plea of discharge in bankruptcy, and that the terms of the composition were carried out by the bankrupts, is brief and in all respects supports the averments of the plea and is uncontradicted. It is all found on pages from 7 to 17 of the record inclusive. The material facts proven are—that after the petition in bankruptcy had been filed by Liebke & Schrage, they proposed a composition to their creditors of thirty cents on the dollar, payable in installments and secured. At the time the note, which is mentioned in the declaration in case No. 597, was held and owned by the Mullanphy Bank of St. Louis, where it had been discounted by the plaintiff in error soon after it had been endorsed by the defendant in error. It was scheduled by the bankrupts as owned and held by the Mullanphy Bank, and, after the compromise had been effected, the bank received the composition notes of the bankrupts and collected them as they became due, and credited the amount so paid on the note which defendant in error had made and which is described in his declaration, so that, when he took iup at the bank, thirty per centtum of the face of the note had been thus paid (p. 10 of record). The same is true of the notes described in case No. 300, with the exception of the name of the bank or banks which held and owned the notes at the time of the adjudication and composition.

At the close of the case the plaintiff prayed, and the court gave, at his instance, the following instructions or declarations of law:

months and secured by deed of trust; that among their creditors to whom this proposition was made, and who were named in the list of creditors presented at the meeting of the creditors held for the purpose of said composition, and who were duly notified of the same, was the Mullanphy Bank; that at said date the said bank was the owner and holder of the note described in the petition; that said proposition was accepted by the requisite number and
36 amount of their said creditors by a resolution by them adopted at the meeting called and held for that purpose, and that said creditors did thereby agree upon the payment to them of the amount stated in said proposition and resolution to discharge defendants from all further liability on account of the same; that such resolution was subsequently ratified and confirmed by two-thirds in number and one-half in value of all their creditors; that on or about the 8th day of November, 1877, these defendants presented said resolution, together with the statement of their assets and liabilities which they had presented to their creditors at said meeting, to the said District Court; and the court did duly inquire, upon hearing, whether such resolution had been passed in the manner directed by law, and became satisfied that it had been so passed, and that it was for the best interest of all of the defendants' creditors that the same should be approved, and thereupon the court ordered and said resolutions were recorded in said court, and said statement of assets and liabilities filed therein; that thereafter the defendants did execute and deliver to the creditors their notes, as proposed by them and accepted in said resolution and secured the same by deed of trust; that the Mullanphy Bank received and accepted notes of the defendant in composition for the note described in the petition; that defendants, before the bringing of this action, had paid in full of their said composition notes as they became due, including those held by Mullanphy Bank—then the defendants became discharged thereby from the indebtedness which had arisen in consequence of their having indorsed and negotiated said

note to said Mullanphy Bank, and from all liability on account of the same; and the plaintiffs can not recover in this action, although he may have paid the said bank the amount remaining due on said note after the said note became due."

To which action of the court in refusing the same
27 the defendants then and there duly excepted, and there was a verdict and judgment for plaintiff for $492.60; and thereupon, and on the 2nd day of February, 1882, the defendants filed their motion for a new trial, in words and figures following, to-wit:

MOTION FOR NEW TRIAL.

"And now comes the defendants and move to set aside the verdict and judgment rendered on the 30th instant, against the defendants, and to grant them a new trial, for the following reasons:

First: The court gave improper and illegal instructions at the instance of the plaintiff.

Second: The court refused legal and proper instructions offered by the defendant.

Third: The verdict and judgment are against the law and the evidence."

ASSIGNMENT OF ERRORS.

The trial and appellate courts erred in holding that the composition in bankruptcy did not discharge the defendants from the indebtedness here sued for; because—

I.

The legal effect of a discharge obtained under the composition clause of the Bankrupt Act is the same, upon

all classes and kinds of indebtedness, as that obtained without composition, and is limited in its scope only to the creditors, who are properly enumerated in the schedule in the composition proceedings.

II.

That, having scheduled these notes in the names of the banks which were then the legal holders and owners of them, and paid the amount provided for in the composition deed to these banks, which accepted the same, they were discharged from all liability on account of them, or that could subsequently arise out of them.

BRIEF AND ARGUMENT.

I.

The decision of the Court of Appeals of this case is found in Missouri Appeals, Vol. 9, page 424, and is affirmed, 81 Mo., 675.

The act of June 22, 1874, under which these proceedings in bankruptcy were concluded, is entitled "An act to amend and supplement an act entitled, 'An act to establish a uniform system of bankruptcy throughout the United States,'" etc.

There is nothing in the act which in any manner attempts to repeal, modify, or limit the effect of Sects. 5067, 5068, 5069, or 5070, Gen. Stats. U. S., 1874, pp. 983, 984, which relate to the kind or classes of debts that are provable; or Sect. 5115, same statutes, p. 992, defining the form, nature and effect of the discharge, except as to creditors not enumerated.

The only purpose and effect of the act of 1874 was to provide a more speedy and economical method for administering the bankrupt's estate, and at the same time afford the relief to the bankrupt contemplated by the act of 1867.

> Smith *et al.* v. Morganstern *et al.*, 2 Fed. Rep., 674.
> Hill v. Trainer, 49 Wis., 547.

Hence a composition in bankruptcy, duly consummated under the provisions of Sect. 17, of the act of 1874, operates as a full discharge from all debts and liabilities enumerated

in the schedule, and from which the debtors were entitled to discharge.

In re Bechet, 12 Nat. Bank Reg., 201.

S. C., 2 Woods, 173.

Miller v. McKenzie, 13 Nat. Bank Rég., 496.

Beebe v. Pyle, 71 N. Y. Ct. App. (26 Sickles), 21.

Slater v. Jones, L. R. 8 Exch., 186.

Hill v. Trainer, 49 Wis., 454, and cases cited.

Mason, etc., Organ Co. v. Bancroft, 4 Cent. Law. J., 295 and note.

In re L. Lytle & Co., 14 Nat. Bank Reg., 457.

Under the provisions of the composition act, Sec. 17, only those who are creditors could take part in the proceedings. The reason is obvious. The creditors who participated in these proceedings, if sufficient in number and amount, determined the rights and compelled the acquiescence of those who were opposed to the composition, but whose opposition was rendered futile because they were in the minority. It is manifest, therefore, that, under the facts presented by this record, the defendant in error was not a creditor, and could in no way be heard or allowed to participate in the proceeding. Were a different construction to be placed on this provision of the act, it would be possible for a single indebtedness to be represented by several parties, and then not only have an undue voice in controlling the proceedings, but, followed to its logical sequence, would permit it to receive an undue proportion of payments.

Such is not the letter or spirit of the act.

In re Scott, Collins & Co., 4 Bank Reg., pp. 29–34, Judge Treat says: "None but *bona fide* creditors are to

have a voice in the composition proceedings, and the simple fact that the debtor chooses to place them on his list does not even *prima facie* establish that they are creditors."

By the law of Missouri, the defendant in error stood in the relation of surety to the plaintiffs.

Weimar v. Shelton, 7 Mo., 234–240.
Priest v. Watson, 75 Mo., 310–315.

He had become the maker of these notes, for the accommodation of plaintiffs in error, and so long as the notes were held and owned by the banks he was not a creditor, but a surety or guarantor, and was included in the class named in Sec. 5070, act 1867.

Under the provisions of that section, defendant in error had the right to insist that these notes be proven and made to participate in the proceedings and payments. This was to be done, either by the holders of the notes or, in the event of their failure to cause them to be represented, defendant in error was entitled to prove them in the name of the holder.

The plain intendment of the law is that such demands should be represented in bankruptcy for the protection of the surety. In the case at bar this was done by the holders of the notes, so that defendant in error was represented in the proceedings by them, and their action is as obligatory on him as if he had elected to pay the notes and represent them in person in the composition proceeding.

So far as he had rights or interests to be represented there, they were vested in the holders of the notes and were thus represented.

No question has heretofore been raised by defendant in error respecting the correctness of this proposition. Con-

ceding it to be sound, what effect did the composition have on the indebtedness?

Were the plaintiffs in error discharged by the composition in bankruptcy from the claims of the holders of the notes, that is, from the claims of the banks?

Of this proposition there can be no open question. They were scheduled as creditors and received their *pro rata* share of the amount paid by the bankrupts in composition. This would bar the holders of the paper by the express provision of the act. This proposition has heretofore been conceded and we presume will not be questioned now.

II.

This discharge from the indebtedness was an absolute legal release of plaintiffs in error against all parties who stood in any relation to it. They owed the debts, or these notes, when they made the composition, and these notes were entitled to the same payment as all the other scheduled claims, and no more; they received this payment, and defendant in error as surety was *pro tanto* relieved from liability.

Had he been the holder of the paper at the date of this composition, he would not have been entitled to more. He could not enlarge his right by permitting the holders of the notes to represent him in the composition proceedings and receive the payment, and then pay the bank the amount for which he still remained liable. Such a construction of the law would not only cause it to work a fraud on the bankrupts who had acted in good faith, but on the other creditors who accepted the composition under the express agreement that the payment of the part of the debt agreed on would discharge the bankrupts as to all alike.

It is argued by the St. Louis Court of Appeals, 9 Mo. App., 424, that inasmuch as the demand in the case sued at bar, does not rest on the notes which defendant in error made, but on an implied agreement by the plaintiffs in error to pay him whatever he might be compelled to pay for their accommodation, therefore, this case does not fall within the provisions of Sec. 5070, or, if it was included in that section, there was no discharge, because the composition gave none.

The case of Hatch v. Hatch, 28 *Law Times*, N. S. 506. (Ex. Ch.) is a parallel case to the one at bar. The act under which the proceedings were had in that case is, in legal effect, the same as the one under consideration, and it was there held that the bankrupt was discharged from liability to his surety, who had paid the amount remaining due on the claim, after the composition. The material facts of the two cases are quite the same.

Under Section 5070 of the Bankrupt Act, the respondent could have taken up these notes from the banks, and have proved them, or if the banks had neglected to prove the notes, he might have insisted upon their doing so.

It is admitted, however, that the claims were proven, the composition accepted and the stipulated amount paid, and this operated as a full discharge of these appellants.

Unless, therefore, it can be successfully contended that, under the composition clause of the Bankrupt Act, a debtor cannot be discharged from his liability to the accommodation maker of his mercantile paper, which, at the time of the bankruptcy, is held by the parties who were expected to take it when it was issued, and who assent to the terms of the composition and receive the *quantum* of the debt

therein provided for, then the appellants are not liable in this action.

That the respondent could not have been scheduled as a creditor, we have seen. He had not put himself in position to do so, as he might have done under the provisions of Sec. 5070 of the Bankrupt Act.

That, however, was a matter purely for himself, and his determination must control. If he desired to participate in the proceedings which resulted in this composition, he had only to take up and become the owner of these notes, and then he would have been the proper party under the act to have been named and notified as a creditor.

He chose to have the banks take charge of the matter and *pro hac vice* represent him. By their participation, they receive thirty per centum of the debt. Respondent could not have done more. He is, therefore, bound by their acts, and is in the same position they would be were they suing in this case.

We respectfully insist, therefore, that the judgment of the lower court is erroneous and should be reversed.

G. M. STEWART,

For Plaintiffs in Error.

116-605 No. 1

FILED
JAN 8 1886
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1885.

Nos. 300 and 635.

LIEBKE, ET AL, PLAINTIFFS IN ERROR,
vs.
WILLIAM THOMAS, DEFENDANT.

LIEBKE, ET AL, PLAINTIFFS IN ERROR,
vs.
WILLIAM THOMAS, DEFENDANT IN ERROR.

UPTON M. YOUNG, and
ALEXANDER YOUNG,
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FRENCH & GIBBS PRS.

Supreme Court of the United States

OCTOBER TERM, 1885.

Nos. 300 and 635.

CHARLES F. LIEBKE, AND CHARLES H. SCHLAGE,

PLAINTIFFS IN ERROR.

vs.

WILLIAM THOMAS,

DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

William Thomas for the accommodation of Liebke & Schlage, and without other consideration, made seven promissory notes payable to the order of Liebke & Schlage, who endorsed and sold them to certain banks at St. Louis, Mo. On the 8th of October, 1877, Liebke & Schlage filed their petition in bankruptcy, and were adjudicated bankrupts. On the 26th of October, 1877, a composition was agreed upon under Section 5103, U. S. Revised Statutes, which composition was on November 8, 1877, approved by the court and ordered to be recorded. William Thomas was not a party to the composition, and was in no way represented in that proceeding. The St. Louis banks, as holders of the notes, were parties and received the dividends of thirty per cent therein agreed

upon. William Thomas afterwards paid to the holders of the notes the several balances remaining due, and instituted suits in the St. Louis Circuit Courts to recover from Liebke & Schlage the sums so paid. Liebke & Schlage pleaded the baukruptcy proceedings which the Circuit at St. Louis held to be a complete defense. The judgment of the Circuit Court was reversed in the St. Louis Court of Appeals. Thomas *vs.* Liebke et al, 9 Mo. Appeals, p. 424. The judgment of the Court of Appeals in No. 635 was affirmed by the Supreme Court of Missouri. Thomas *vs.* Liebke, 81 Mo. p. 675.

In Case No. 300 there was a judgment, in the St. Louis Circuit Court, in favor of Thomas, which was affirmed in the St. Louis Court of Appeals.

BRIEF AND ARGUMENT.

I.

1. An accomodation maker of a negotiable note is not barred of his remedy against the payee and endorsee by reason of a composition with the latter's creditors to which the maker of the note was not a party.

2. The claim of the maker is not a claim upon the note, and is distinct from the claim proved up in the bankruptcy proceedings by the holder of the note.

3. It is immaterial that the maker's claim was not matured by a payment of the note at the date of the composition agreement.

4. Where there is no general discharge in bankruptcy proceedings, the statutory provision limiting the allowance to a surety does not apply.

5. To deprive a surety who has paid his principal's debt of a recourse upon the principal the provision must appear in distinct terms, and must be strictly construed.

These views were announced by the St. Louis Court of Appeals, and were approved by the Supreme Court of Missouri.

Thomas *vs.* Liebke, 9 Mo. Appeals p. 424; Thomas *vs.* Liebke, 81 Mo. p. 675.

As to the banks, the holders of the notes, Thomas was the maker; but as between Thomas and Liebke & Schlage, "he was surety with the right to be protected against the responsibilities of a maker and to be indemnified by the defendants if he should pay their debt."

Thomas did not sue on the notes, but sought to be indemnified. The action he brought was an action upon the contract which the law implies. Stone *vs.* Corbett, 20 Mo., 350; Meis *vs.* Geyer, 4 Mo. Appeals, 405.

II.

The plaintiffs in error rely upon the case of Hatch *vs.* Hatch, 28 Law Times, N. S., 506 Ex. The English bankrupt law provides for a "deed of arrangement, signed by or on behalf of three-fourths in number and value of all the creditors of the bankrupt * * * and if the court shall be satisfied that the deed has been duly entered into and executed, and that its terms are reasonable and calculated to benefit the general body of the creditors under the estate, it shall by order make a declaration of the complete execution of the deed and shall direct the same to be registered with the chief registrar, and shall also, if he thinks fit, annul the bankruptcy; and such deed shall thereafter be as binding in all respects on any creditor who has not executed the deed as if he had executed it, provided such deed be registered with the chief registrar in manner directed by the order. Stats. 24 and 25. Victoria, chapter 234; 7 Jurist, part II, Supplement, Sept. 28, 1861, p. 132.

Under the American bankrupt laws we have a resolution, not a deed, and a statement "showing the whole of his (debtor's) assets and debts, and the names and addresses of the creditors to whom such debts respectively are due." The law then provides that the composition and resolution "shall